

EMPLOYER STATUS DETERMINATION
SAN BERNARDINO ASSOCIATED GOVERNMENTS

This is the decision of the Railroad Retirement Board regarding the status of San Bernardino Associated Governments (SANBAG) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

According to information provided by Charles A. Spitulnik and Richard F. Riley, Jr., attorneys for SANBAG, SANBAG is a governmental entity of San Bernardino County, California and a number of municipalities within San Bernardino County which serves as the transportation commission for the county. SANBAG is one of five southern California agencies which executed a Joint Powers Agreement in July 1991.¹ Under the Joint Powers Agreement SANBAG and the other four county agencies have delegated to SCRRA the administration of all the commuter rail service over rail lines or easements which have been acquired by the five county agencies from the Atchison, Topeka and Santa Fe Railway Company, the Southern Pacific Transportation Co., and the Union Pacific Railroad Co. SANBAG has purchased fee interests in rail property located in San Bernardino County from the Atchison, Topeka and Santa Fe Railway Co. and Southern Pacific Transportation Co. The SCRRA commuter service in San Bernardino County operates over the lines purchased by SANBAG from Santa Fe. SCRRA performs this duty by contracting the actual operation of the rail service to Amtrak². Southern Pacific maintains rail freight service over a small portion of the right-of-way property SANBAG purchased from Santa Fe; no commuter service operates over any of this line.

The definition of an employer contained in section 1(a) of the Railroad Retirement Act (45 U.S.C. § 231 (a)) reads in part as follows:

(1) The term "employer" shall include--

(i) any express company, sleeping car company, and carrier by railroad, subject to [the Interstate Commerce Act];

¹The other agencies are Southern California Regional Rail Authority ("SCRRA"), Ventura County Transportation Commission (VCTC), the Los Angeles County Metropolitan Transportation Commission ("LACMTA"), the Orange County Transportation Authority ("OCTA"), and the Riverside County Transportation Commission ("RCTC"). LACMTA, OCTA and RCTC have all been found not to be employers covered by the Acts. See B.C.D. 94-48, B.C.D. 94-47, and B.C.D. 94-47.1, respectively. VCTC and SCRRA have been submitted for Board opinions simultaneously with this request for SANBAG.

² Amtrak is an employer under the Acts, therefore, the employees of Amtrak performing these services are covered under the Acts.

SAN BERNARDINO ASSOCIATED GOVERNMENTS

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad * * *.

Section 1(a) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a)) provides a substantially identical definition.

SANBAG is a governmental entity whose sole involvement in the commuter rail service operated over the lines it has purchased is to collect and disburse the sales tax monies which subsidize the commuter rail service and to have representatives serve on the Board of directors of SCRRA and provide the general oversight function associated with such board service. It is not involved in the transportation of freight or passengers in interstate commerce and, accordingly, is not subject to the Interstate Commerce Act. VCTC likewise does not provide any service or operate any equipment in connection with the transportation of freight or passengers in interstate commerce. Accordingly, it does not fall within the definition of employer in the Railroad Retirement Act and the Railroad Unemployment Insurance Act. See B.C.D. 94-48, In re Los Angeles County Transportation Commission.

The Board holds that SANBAG is not an employer under the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

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